ADMINISTRATIVE APPEAL OF

CONTINENTAL OIL COMPANY

IBIA 74-8-A Decided December 11, 1973

Appeal from an administrative decision involving oil and gas lease No. 14-20-205-4266.

Affirmed.

Indian Lands: Leases and Permits: Generally--Indian Lands: Leases and Permits: Oil and Gas

> Where an oil and gas lease provides for a term of years and as much longer thereafter as oil and gas is produced in paying quantities, upon failure of production during the primary period the lease terminates by its own terms.

Indian Lands: Leases and Permits: Generally--Indian Lands: Leases and Permits: Oil and Gas

> Neither the payment nor the receipt of advance rentals by departmental officials on a lease which has terminated can continue or reinstate the lease.

APPEARANCES: Carl Young, III, Esq., for appellant, Helmerich and Payne, Inc.

OPINION BY MR. WILSON

This matter comes before this Board on an appeal from an Area Director's refusal to approve an oil and gas communitization agreement of Helmerich and Payne, Inc., hereinafter referred to as appellant.

The agreement in question involves a portion of the trust allotment of Broken Rib, deceased Cheyenne-Arapaho No. 2316, described as NW 1/4 SW 1/4 section 8, T. 18 N., R. 13 W, I.M. An oil and gas lease, No. 14-20-205-4266, was approved thereon by the Acting Area Director, Anadarko Area Office, Bureau of Indian Affairs, Anadarko, Oklahoma, on December 21, 1967, for a period of five years and "as much longer thereafter as oil and gas is produced in paying quantities from said lands." (Emphasis supplied.)

The agreement, subject of the appeal herein, was submitted to the Area Director, Anadarko Area Office, by the appellant on March 22, 1973. Thereafter, by letter dated April 5, 1973, the Area Director advised the appellant that its agreement could not be approved. The Director's refusal is couched in the following language:

> We have carefully considered Mr. Young's request that we approve your communitization agreement and reject the bid tendered at the March 21 land sale, and have determined that such action cannot be justified under the provisions of the lease and the applicable regulations of the Secretary of the Interior, nor would it be in the best interest of the Indian owner. The proposed communitization now comes too late. The lease has expired and the leased premises are not included within a producing unit by reason of an approved communitization agreement. (Emphasis supplied.)

The appellant on April 16, 1973, filed an appeal from the Area Director's refusal. In support of the appeal the appellant urges as error the following questions of fact and law:

> 1. That the decision of the Area Director as it applied to the Appellant is in violation of and in contradiction to the Lease Contract # 14-20-205-4266 and more particularly described as follows:
>
> (a) The proposed communitization agreement was approved by the United States Geological Survey subject to certain changes which were incorporated in said agreement; and
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> (b) The Indian mineral owner, Danny Elroy Wall Blackhorse, executed the communitization agreement prior to the termination date of the lease agreement, thereby permitting him to participate in the producing well within the unit; and
>
> (c) The advance royalty payment, received by the

Bureau of Indian Affairs, and accepted by the Bureau of Indian Affairs on December 1, 1972; and

(d) Paragraph 11 of lease contract #14-20-205-4266 (Form 5-154H-Oil and Gas Mining lease-Allotted Indian Lands) does not state that approval of an "agreement for cooperative or unit development of the field or area" must be formally secured prior to a lease termination date. The communitization agreement in question was approved in substance by the United States Geological Survey and an Indian Mineral Owner prior to the termination date of the lease. Paragraph 11 states that the approval by the Secretary of the Interior must be during the period of supervision, which period is still in progress.

2. That the decision of the Area Director is not supported by substantial evidence and that the refusal to formally approve the Communitization Agreement is arbitrary and unreasonable in that the Indian owner has been denied the right to share in a producing well, which well may in view of its economic capability be the only well drilled on the quarter-section.

The only question for the determination of this Board is:

Was the Area Director, under the circumstances as set forth above in appellant's contentions, in error in refusing to approve the communitization agreement?

We think not. It is indisputable from the record that there was no production on the leased premises nor was the leased premises included within a producing unit under a communitization agreement approved by the Area Director prior to the expiration of the lease. (Emphasis supplied.) As a consequence, the lease expired by its own limitation on December 21, 1972. In view thereof, we fail to see

how the events set forth in appellant's contentions could possibly justify the projection of the lease beyond its primary term. The Department has long held that failure to put leased premises under production in paying quantities during the primary period results in the termination of the lease by its own terms. Solicitor's Opinion, 58 I.D. 13 (1942); The Superior Oil Company and The British-American Oil Producing Company, 64 I.D. 49 (1957). The courts have likewise held accordingly. United States v. Brown et al., 15 F.2d 565 (D.C. Okla. 1926); Woodruff v. Brady, 72 P. 2d 709 (1937); Dygus et al. v. Rogers et al., 181 P. 2d 253 (1947).

The United States Geological Survey contrary to appellant's contention did not approve the communitization agreement submitted by appellant on March 16, 1973. The record indicates the United States Geological Survey returned the agreement to appellant without action.

Execution of the agreement by the Indian mineral owner, Danny Elroy Wall Blackhorse, prior to the termination of the primary term of the lease, in itself could not legally bind or commit the leased acreage into the participating unit. Only the approval by the Area Director during the primary term of the lease could officially commit the acreage into the producing unit and thus continue the lease in full force and effect.

The record indicates that money was received by the Bureau of Indian Affairs as advance payment of delay rentals. Receipt, however, does not constitute acceptance. In any event, acceptance would not continue or reinstate the lease in question which had terminated by its own limitation.

We cannot agree with the appellant's argument regarding the term "supervision" as used in paragraph 11 of lease contract #14-20-205-4266 (Form 5-154h). The appellant in effect urges that so long as the premises in question remained in trust and under the jurisdiction of the Secretary of the Interior the agreement could be approved after the lease termination date. As we have stated elsewhere herein only the approval of the agreement during the primary term of the lease could continue the lease beyond the termination date thereof. (Emphasis supplied.) To approve the agreement after the termination date of the lease would be improper and without authority. United States v. Brown, supra; cf. Haby v. Stanolind Oil and Gas Company, 228 F.2d 298 (5th Cir. 1955).

Moreover, we disagree with appellant's final contention that the decision of the Area Director was not supported by substantial evidence and that his refusal was arbitrary and unreasonable. We feel the Area Director's decision was proper and correct under

the circumstances, i.e., the lease had expired by its own terms or limitation and no action on his part under the circumstances could possibly revive the terminated or expired lease.

In view of the reasons hereinabove set forth and discussed, the Area Director's refusal of April 5, 1973, to approve the communitization agreement is AFFIRMED and the appellant's appeal IS HEREBY DISMISSED.

This decision is final for the Department.

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Alexander H. Wilson, Member

I concur:

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Mitchell J. Sabagh, Member